

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

James Sharkey,

Petitioner,

v.

Brian Williams, et al.,

Respondents.

Case No.: 2:20-cv-00253-KJD-DJA

**Order**

This is a federal habeas proceeding under 28 U.S.C. § 2254 brought by James Sharkey challenging his state court conviction for battery constituting domestic violence. Before the court are respondents' motion for clarification (ECF No. 62) and motion for additional time (ECF No. 65) to file an answer to the remaining claims in Sharkey's habeas petition.

On December 10, 2021, this court entered an order denying Sharkey's motion for appointment of counsel and granting respondents' motions for extension of time. ECF No. 59. Sharkey filed a notice of appeal of that order. ECF No. 60. With their motion for clarification, respondents ask the court how to proceed in light of the notice of appeal. They filed the motion for additional time to answer because they are uncertain how to proceed without clarification from the court.

1 The December 10, 2021, order was not an appealable order. *See Pena-Calleja v. Ring*,  
2 720 F.3d 988, 989 (8th Cir. 2013) (denial of habeas petitioner's motion for appointment of  
3 counsel would not be reviewed on interlocutory appeal because the order was not a conclusive  
4 determination, and the denial was clearly reviewable on appeal of a final order). Thus, this court  
5 is not deprived of jurisdiction and may proceed with the adjudication of Sharkey's habeas  
6 petition. *See United States v. Garner*, 663 F.2d 834, 837 (9th Cir. 1981) ("Where the deficiency  
7 in a notice of appeal, by reason of ... reference to a nonappealable order, is clear to the district  
8 court, it may disregard the purported notice of appeal and proceed with the case, knowing that it  
9 has not been deprived of jurisdiction."). Respondents may, therefore, answer Sharkey's petition  
10 without waiting for the Ninth Circuit's disposition of Sharkey's notice of appeal.

11 IT IS THEREFORE ORDERED that respondents' motion for clarification (ECF No. 62)  
12 is GRANTED as described above.

13 IT IS FURTHER ORDERED that respondents' motion for extension time (ECF No. 65)  
14 is GRANTED *nunc pro tunc* as of January 24, 2022. Respondents shall file their answer within  
15 **20 days** of the date this order is entered. Sharkey shall have **60 days** from the date on which the  
16 answer is served on him to file and serve a reply.

17 Dated: February 2, 2022.



U.S. District Judge Kent J. Dawson